UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION TWELVE

CASE NO. 12-RC-071890

ADT SECURITY SERVICES, INC.,

Employer,

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 349, AFL-CIO,

Petitioner.

EMPLOYER'S REQUEST FOR REVIEW TO THE NATIONAL LABOR RELATIONS BOARD

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EMPLOYER'S REQUEST FOR REVIEW TO THE NATIONAL LABOR RELATIONS BOARD

Pursuant to Section 102.67 of the Rules and Regulations of the National Labor Relations Board, ADT Security Services, Inc. ("ADT" or "Employer"), files this Request for Review of the Decision and Direction of Election ("DDE") issued on February 17, 2012, by the Acting Regional Director for Region 12. This Request should be granted based upon the following grounds:

- A substantial question of law or policy is raised because of the absence of officially reported Board precedent.
- A substantial question of law or policy is raised because of a departure from officially reported Board precedent.
- The Acting Regional Director's decision on substantial factual issues is clearly erroneous and such error prejudicially affects the rights of Employer.

I. BACKGROUND AND BASIS FOR REVIEW

On December 21, 2011, the Petitioner, International Brotherhood of Electrical Workers, Local Union 349, AFL-CIO (the "Union" or "Petitioner"), filed a representation petition in Case No. 12-RC-071890, seeking certification as the collective bargaining representative in the following unit at ADT's facility located in Miramar, Florida (the "Miramar Facility"):

Included:

(Full time Service Technicians High Volume, and Core) (Full time Installation Technicians High Volume, and Core) Miami-Dade, Broward, and Monroe Counties only.¹

Excluded:

Administration, Clerical, Warehouse, Security Guards, Permit Clerks, Permit Runners, Supervisors

(Bd. Ex. 1.)

The Board held a hearing² on January 17-18, 2012, in Miami, Florida. At the hearing, the parties disputed the scope of the petitioned-for unit. The Employer took the position that the only appropriate unit would actually be two separate units, one of commercial division employees³ and one of high volume division employees.⁴ The Employer further asserted that 10

¹ The Employer will use the phrase "field technicians" to refer to all employees in the petitioned-for unit collectively.

² References to the hearing transcript will be referred to as "Tr.," followed by the appropriate page number(s). References to exhibits introduced into evidence at the hearing are designated by the exhibit number, preceded by "Bd. Ex." for the Board's exhibits and "ADT Ex." for ADT's exhibits.

³ The commercial line of business is also referred to by supervisors and employees as "core" and "core commercial." The following technicians in the petitioned-for unit would be in the commercial unit: 4 installer technicians, 11 lead installer technicians, 6 senior installer technicians (collectively, the "commercial installers"), and 28 service technicians.

⁴ The high volume line of business is also referred to by supervisors and employees as "residential," "resi," "resi/high volume," and "resi/small business." The following technicians in the petitioned-for unit would be in the high volume unit: 42 installer technicians commission only res, 8 installer technicians commission only small business (collectively, the "residential installers"), and 55 service technicians.

plant clericals (hereinafter "production clericals")⁵ should be added to the commercial unit and that 29 production clericals⁶ should be added to the residential unit. The Petitioner took the position that the petitioned-for unit is appropriate.

On February 17, 2012, Acting Regional Director David Cohen issued the DDE in this case. The Employer respectfully requests review of this DDE because:

- A substantial question of law or policy is raised due to the absence of officially reported Board precedent regarding whether a bargaining unit can be appropriate even though it includes employees who will soon be working for separate companies.
- The Acting Regional Director departed from officially reported Board precedent by excluding ADT's warehouse employees from the unit.
- The Acting Regional Director clearly erred in deciding substantial factual issues related to the composition of the unit and such errors prejudicially affect the rights of Employer.

II. ISSUES

- A. Whether the petitioned-for unit is appropriate, where it includes technicians from both the high volume and commercial divisions even though the two divisions will operate in two separate companies by the end of September 2012 and currently function completely independent of one another.
- B. Whether the petitioned-for unit is appropriate, where the unit excludes employees who have daily contact with petitioned-for employees; share the same terms and conditions of employment with petitioned-for employees; and whose duties are functionally integrated with those of the petitioned-for employees.

⁵ These 10 employees include: 2 drafters, 1 estimator, 2 specialists field support national accounts ("field support specialists"), 2 processors licensing compliance ("licensing compliance processors"), 2 coordinators install ("install coordinators"), and 1 coordinator service ("service coordinator"). The official job title is followed by the commonly used title in parentheses. In this Request, the Employer will refer to employees by their commonly used titles.

⁶ These 29 employees include: 10 coordinators permitting operations ("permit clerks"); 1 processor licensing compliance ("licensing compliance processor"), 6 assistants permitting operations ("runners"); 4 install coordinators, 2 service coordinators, 1 coordinator supply chain ("supply chain coordinator"); 2 material handlers, 1 lead material handler, and 2 processors admin ("close-out clerks").

III. SUMMARY OF THE ARGUMENT

Throughout this Request, ADT will demonstrate five things. First, ADT will show that the Board should grant this Request because a substantial question of law or policy exists because of the absence of officially reported Board precedent. Specifically, the Employer is unaware of – and the Acting Regional Director did not cite – any Board precedent that addresses directly whether a bargaining unit can be considered appropriate even though it includes employees that will soon work for different companies following a corporate split.

Second, ADT will show that the petitioned-for unit should be split into two units – one unit of commercial employees and one unit of high volume employees. The petitioned-for unit is inappropriate because it includes technicians from both the commercial division and high volume division when those two divisions will soon operate in different companies. Also, the commercial technicians and high volume technicians work completely independent of one another and, thus, do not share a community of interest. As a result, the only appropriate unit would actually be two units – a commercial unit and a high volume unit.

Third, ADT will show that the high volume unit must include the supply chain coordinator, material handlers, lead material handler, high volume install coordinators, high volume service coordinators, runners, permit clerks, licensing compliance processor, and close-out clerks. These employees are production clerical employees, and under Board principles, must be included in the high volume unit.

Fourth, ADT will show that the commercial unit should include the commercial install coordinators, commercial service coordinator, drafter, estimators, field support specialists, and commercial licensing compliance processor in addition to the commercial technicians. These

employees are production clerical employees and, under Board principles, must be included in the commercial unit.

Fifth, ADT will show that even if the Board rejects the Employer's argument that the petitioned-for unit should be split into two units, the single unit should nevertheless include the production clerical employees.

IV. STATEMENT OF FACTS

A. General Background

ADT, which is owned by Tyco International ("Tyco"), installs and services security cameras, burglar alarms, card access systems, closed circuit television systems, and fire alarm systems. ADT's Miramar Facility is divided into two separate divisions. The commercial division provides services to warehouses, national franchises, and other facilities larger than 5,000 square feet. (Tr. 17.) The high volume division provides services to residential homes, condominium associations, and small businesses with facilities smaller than 5,000 square feet. (Tr. 17.) These divisions have separate front-line managers, separate administrative employees, and separate install and service technicians in the field. (Tr. 18-19).

Within each of the divisions, the workload is split into two teams – the install team and the service team. The install team handles the installation of new systems, whereas the service team handles the maintenance and repair of existing systems. With a few exceptions, managers and employees at the Miramar Facility work on either the install team or the service team. In other words, an employee is assigned to one of two divisions – either commercial or residential. Then, the employee is assigned to one of two teams within that division – either install or service.

1. Commercial Workflow

Commercial install jobs come from the ADT sales representatives. (Tr. 43.) The estimator may get involved at this stage in the process to determine how the install job can be completed most efficiently. (Tr. 43-44.) Once the contract is signed, all the documents come to a permit clerk, who in turn processes the permit application. (Tr. 44.) Almost all commercial install jobs require a permit from the municipality in which the job will occur. When the municipality returns the permit to ADT, the permit clerk will give the permit to an install coordinator. (Tr. 44.) The install coordinator takes the permit, along with the contract, materials list, and other documents, and creates an install packet and distributes the same to the commercial installers. (Tr. 44.) This can occur by the technician either receiving the packet directly from the install coordinator or from a "slot" in the same cubicle as the install coordinator and next to the coordinator's desk. (Tr. 326-27.)

The commercial installer brings the install packet to the warehouse counter, which is staffed by a warehouse employee. (Tr. 44.) The warehouse employee pulls the necessary equipment from the warehouse, and together, the warehouse employee and commercial installer verify that all the necessary materials are there. (Tr. 44, 154.)

Now, the commercial installer heads out into the field to complete the job. (Tr. 44.)⁷ When the install job is complete, the commercial installer typically calls a permit clerk to notify them the job is ready to be inspected by the municipality. (Tr. 44-45.) The commercial installer returns the install packet with a signed customer acceptance form to the install coordinator. (Tr. 45.) The install coordinator then gives the commercial installer his next install job assignment. (Tr. 45.)

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⁷ Commercial install jobs can last from a few months to over a year. (Tr. 396.) Once assigned a job, a commercial installer usually heads straight to the jobsite from home. (Tr. 396.)

On the other hand, commercial service jobs come from existing ADT customers calling in service requests. (Tr. 45.) The jobs are inputted into the Mastermind system, and the commercial service coordinator assigns it to a service technician. (Tr. 227.) Unlike the commercial installer, who picks up his install packet from an install coordinator, the service technician is notified via handheld device that he has a new service job. (Tr. 150.) If there is a technical issue with the handheld device or some other scheduling error, which happens regularly, the service technician contacts the service coordinator to get the next service job. (Tr. 239-45.)

A commercial service technician keeps equipment on his truck and replenishes that equipment as it is used. (Tr. 155.) As the service technician uses equipment, he scans it using a handheld device. (Tr. 155.) This updates ADT's inventory in the Oracle system. When the service technician runs out of a particular part, he requests a replacement at the warehouse counter. (Tr. 155.)

2. High Volume Workflow

The high volume workflow begins when a customer calls desiring a system for his or her residence or small business. When the customer's order is finalized, it is sent to a high volume install coordinator, who creates an install packet for the high volume installers. (Tr. 349-50.)

Before the high volume installer can be dispatched, ADT must get a permit from the municipality for the work. A permit clerk collects the paperwork, generates a permit application, and gives the same to a runner. (Tr. 289-90, 292-95.) Because of the large number of jobs completed by the high volume division, the runners take the high volume permit applications directly from the Miramar Facility to the municipalities. When a municipality notifies ADT that a permit is ready, the runner picks it up and returns it to the Miramar Facility (or directly to the

jobsite if the technician needs the permit to start work). (Tr. 57.) When the permit is returned to the Miramar Facility, the install coordinator adds the permit to the install packet. He or she places the install packet in the appropriate residential installer's box. (Tr. 349.) There are boxes at the install coordinators' desk for each of the high volume installers they support. (Tr. 349.)

The high volume installer, in turn, gives the install packet to the warehouse counter, and a warehouse employee retrieves the necessary equipment. (Tr. 158-59.) Now the high volume installer leaves for the jobsite. When the install job is complete, the permit clerk will schedule a time for the municipality to inspect the work. (Tr. 304-305.) Meanwhile, the high volume installer returns the install packet to the Miramar Facility. (Tr. 275.) A close-out clerk verifies all the appropriate documents are present, processes the paperwork, and scans everything into an electronic filing system called Order 2 Catch or O2C. (Tr. 275-76.)

High volume service jobs come from existing ADT customers calling in requests for work to be done on systems at their residences or small business. The high volume service coordinator assigns the new service job to a service technician, and the service technician is notified via handheld device that he has a new service job. (Tr. 54.) The service technician keeps an inventory of equipment with him in the field. (Tr. 54.) As the service technician uses equipment, he scans it using a handheld device. (Tr. 54.) This updates ADT's inventory in the Oracle system. The service technicians obtain replacement parts from the warehouse employees or contact the service coordinator to find out if another service technician is close by that has the needed part. (Tr. 54.) Once the job is completed, the service coordinator does the billing for the job by looking in the Oracle system to determine what equipment was installed on-site. (Tr. 54.)

B. By September 2012, the High Volume Division and Commercial Division Will Operate in Two Separate Companies

On September 19, 2011, Tyco Chairman and CEO Ed Breen announced that Tyco would split into three completely separate companies by the end of September 2012. (ADT Ex. 2.) One company would be an ADT residential and small business security company; one would be a flow control company; and the third company would be a commercial fire and security company. (ADT Ex. 2.) The ADT high volume (residential and small business) security company will "spinoff" from Tyco altogether and be its own publicly-traded company. (ADT Ex. 2.) Because the high volume division will become one standalone company and the commercial division will become another standalone company, one of the two divisions will move from the Miramar Facility. (Tr. 123.)

As the Acting Regional Director himself observed, Tyco has already taken a number of substantial steps to accomplish the corporate split. These steps include:

- 1. Securing the necessary approval from the board of directors (ADT Ex. 2.);
- 2. Separating the human resources managers for the commercial and high volume divisions (Tr. 130);
- 3. Separating the frontline management for the commercial and high volume divisions (Tr. 106)
- 4. Identifying the individuals that will serve as the CEOs of the commercial and high volume companies (ADT Ex. 4);⁹
- 5. Determining that each company will have its own human resources department, administrative department, legal department, marketing department, sales department, and IT department (ADT Ex. 7; ADT Ex. 8);
- 6. Creating a Separation Management Team to determine the legal, capital, and organizational structure of new companies (ADT Ex. 5);
- 7. Recruiting individuals to serve on the boards of directors for the new commercial and high volume companies (ADT Ex. 33);
- 8. Filing requests with tax authorities in the United States, Switzerland, and Luxembourg to have the separation treated as a tax-free transaction for Tyco shareholders (ADT Ex. 33); and

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⁸ The Miramar Facility does not have flow control operations.

⁹ Naren Gursahaney will be the CEO of the high volume company (ADT Ex. 3) and George Oliver will be the CEO of the commercial company (ADT Ex. 4).

9. Segregating the current corporate leadership so that only the CEO of Tyco still has responsibility over both divisions (ADT Ex. 32, ADT Ex. 33).

Despite all of this, and despite the fact that the Union presented no evidence suggesting the corporate split might not occur, the Acting Regional Director characterized Tyco's plans as speculative. (DDE 32.) Such a characterization is not supported by the evidence in the record and is clearly erroneous.

C. The High Volume Division and Commercial Division Currently Function Completely Independent of One Another

Beginning in January 2012, the Tyco businesses were directed to start operating in line with how they are going to look after the corporate split. (ADT Ex. 7.) At the Miramar Facility, this meant the high volume division and the commercial division started functioning as two independent operations. The management chain and the operational structure at the Miramar Facility are almost completely segregated.

1. No common managers or executive besides Tyco's CEO

The high volume front-line managers at the Miramar Facility report to Mark Ricciardi, High Volume Area Operations Manager. (ADT Ex. 32.) Mr. Ricciardi reports to Mozi Fazeli, Regional Group Director located in Atlanta, Georgia. (ADT Ex. 32.) Mr. Fazeli reports to Shawn Lucht, Group Vice President of Operations, who reports to John Koch, President of ADT Residential/Small Business, who reports to Naren Gurashaney, President of ADT Worldwide, who reports to Ed Breen, CEO of Tyco. (ADT Ex. 32.)

The commercial front-line managers at the Miramar Facility report to David Walker,
Commercial Area Operations Manager. (ADT Ex. 31.) Mr. Walker reports to Joe Cox, Regional
Group Director, located in Atlanta, Georgia. (ADT Ex. 31.) Mr. Cox reports to Mike Hanley,
Vice President of Operations, who reports to John Kenning, President of ADT Commercial, who

reports to George Oliver, CEO Tyco Fire and Security Division, who reports to Ed Breen, CEO of Tyco. (ADT Ex. 31.) As is evident from this management chain, the commercial division and the high volume division do not share any managers or executives until the level of Tyco's CEO.

2. Completely Separate Operations

The commercial employees and high volume employees work in separate areas of the Miramar Facility. (Tr. 18.) Likewise in the warehouse, the commercial equipment and the high volume equipment are kept separate. (Tr. 115.) The field technicians are assigned to either the commercial division or the high volume division and work exclusively in their assigned division. (Tr. 126.) In the computer system, managers can only change work orders for their division, and the commercial and high volume work orders appear on two different screens. (Tr. 119.) With the exception of the four warehouse employees, ADT has assigned all the managers and employees at the Miramar Facility to a division. (Tr. 105-06.) The warehouse employees will also be split into one division or the other by March 5, 2012. (Tr. 113-15.)

D. The Petitioned-for Employees Share the Same Terms and Conditions of Employment with the Disputed Employees

1. Employee Pay and Benefits

All of the disputed employees and most of the employees in the petitioned-for unit are hourly employees eligible for overtime. The hourly rates for all these employees are in the same general range. (Tr. 137-140.)

Only the installer technicians commission-only residential and installer technicians commission-only small business are paid on commission. (Tr. 139.) They earn in the range of \$40,000 to \$80,000 per year. (Tr. 139.) All other field technicians are hourly employees eligible for overtime. The high volume service technicians' hourly wage rates range from \$15.49 to

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 $^{^{10}}$ Two employees will go to the high volume division and the other two will go to the commercial division. (Tr. 113-15.)

\$23.92. (Tr. 139.) The commercial installer technicians' hourly wage rates range from \$19.21 to \$22.29. (Tr. 138.) The lead installer technicians' hourly wage rates range from \$18.10 to \$26.81. (Tr. 138.) The senior installer technicians' hourly wage rates range from \$16.19 to \$23.43. The commercial service technicians' hourly wage rates range from \$16.83 to \$26.33.

Employees in the petitioned-for unit receive the same company benefits as the disputed employees. (Tr. 132-36.) This includes the same medical insurance plans, the same vacation plans, the same holiday schedules, the same dental insurance plans, the same flexible spending account options, the same life and accident insurance policies, the same supplemental life insurance plans, and the same long-term disability plans. (Tr. 133-35.)

2. Employment Policies

All of the hourly employees record their time either by clocking in or by keeping a timesheet. The employees who work inside the Miramar Facility punch a time clock, and the field technicians keep timesheets. (Tr. 464.) All of these time entries are put into the Oracle system, which has a module for processing payroll. (Tr. 465.)

3. Job Qualifications and Training

There are no particular education requirements or certifications needed to qualify for any of the job classifications involved in this petition. (Tr. 470.) With regard to on-the-job training, ADT maintains a learning module system, called LMS, where employees can go to complete online training courses. (Tr. 467-68.) There are approximately four to six training courses on LMS that apply to all employees at the Miramar Facility. (Tr. 468.) ADT may require an employee to complete training courses that are relevant to his or her job duties. (Tr. 469.) For

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¹¹ The hourly wage rates for employees in the disputed classifications can be found in Parts IV.E and IV.F of this Brief.

instance, field technicians and warehouse employees complete a safety course, and employees who drive vehicles usually complete the Smith driving training course. (Tr. 469-476.)

4. Transfers

It is not uncommon for commercial employees to transfer into another commercial position or for a high volume employee to transfer into another high volume position. Also, employees transfer into and out of job classifications within the petitioned-for unit with some regularity. For instance, five of the six runners in the high volume division formerly were field technicians. (Tr. 100.) However, these transfers rarely, if ever, occur across division lines. (Tr. 453.)

E. Job Descriptions for Disputed Employees in the High Volume Division

1. Supply Chain Coordinator, Material Handler, and Lead Material Handler

There is one supply chain coordinator, two material handlers, and one lead material handler at the Miramar Facility, and they are the warehouse employees. (Tr. 63-66.) They receive deliveries from ADT's suppliers and maintain the inventory of parts and other materials. (Tr. 63.) The warehouse employees work at the counter in the warehouse where parts are distributed and track those distributions in ADT's inventory system. (Tr. 64.)

The supply chain coordinator is an hourly employee eligible for overtime. This person's hourly wage rate is \$17.27. (Tr. 140.) The material handlers are hourly employees eligible for overtime. Their hourly wage rate is \$17.53. (Tr. 140.) The lead material handler is an hourly employee eligible for overtime. This person's hourly wage rate is \$22.12. (Tr. 140.)

2. Install Coordinator and Service Coordinator

There are four high volume install coordinators at the Miramar Facility, and their job is to do all things necessary to get the high volume installers into the field. (Tr. 343.) This

encompasses creating a master schedule showing the jobs for all installers, putting together job packets, and assigning replacement jobs in the event of a "blow out." (Tr. 345-46.) The install coordinator speaks with the high volume installers up to twenty times a day. (Tr. 346.)

The install coordinator assigns jobs to the high volume installers in the Telemar computer system based on how well the difficulty of the job matches up with an installer's skill level. (Tr. 347-48.) The install coordinator also puts together paperwork for the installers to take with them to the jobsite. (Tr. 348.) Finally, the install coordinators call customers directly to confirm appointments. (Tr. 351.) If a blow out occurs or a customer needs to reschedule, the install coordinators address those issues as well. (Tr. 352-53.)

The install coordinators are, both on the commercial side and the high volume side, hourly employees eligible for overtime. Their hourly wage rates range from \$19.94 to \$21.90. (Tr. 139.)

There are two high volume service coordinators at the Miramar Facility, and their job is to do all that is necessary to get the residential service technicians into the field. That means the service coordinators are responsible for assigning the backlog of service jobs to the service technicians and for tracking what parts actually get installed on-site by the service technicians.

(ADT Ex. 1; Tr. 54.) The service coordinators interact with the service technicians daily.

(Tr. 55.) Service technicians call the service coordinators in order to resolve scheduling issues, such as needing to work closer to home or leave work early. At times, the service coordinators call the technicians when information is needed to complete the billing process. (Tr. 54-55.)

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¹² The phrase "blow out" is used to refer to a customer not showing up to let the technicians in at a jobsite. (Tr. 352-53.)

The service coordinators, both on the commercial side and the high volume side, are hourly employees eligible for overtime. Their hourly wage rates range from \$19.34 to \$20.66. (Tr. 140.)

3. Runner

There are six runners at the Miramar Facility, and they physically take the permit applications to the municipalities in the area and apply for the permits needed for most install jobs. (Tr. 57.) The runners drive company vehicles and wear the same uniforms as the residential installers. (Tr. 105, 451.) The runners will either bring the permit back to the Miramar Facility or, if it is a rush job, take the permit directly to the customer's residence or small business. (Tr. 57-58.)

Five of the six runners were formerly field technicians. (Tr. 100.) The runners are hourly employees eligible for overtime. Their hourly wage rates range from \$13.32 to \$19.78. (Tr. 140.)

4. Permit Clerk, Licensing Compliance Processor, and Close-Out Clerk

There are ten permit clerks at the Miramar Facility, and they process the permit applications required by municipalities before new systems can be installed. (Tr. 56.) Before they head into the field, the high volume installers often come by the permit clerks' desks to pick up the necessary permits, and at times, a permit clerk can have a line of five to ten high volume installers waiting for their permits. (Tr. 289-90.) If a particular permit is not ready when the technician leaves for the jobsite, the permit clerk will coordinate how to get the permit to that technician in the field. (Tr. 292-93.) This typically involves having a runner retrieve the permit from the municipality and take it to the technician directly. (Tr. 292-93.) While in the field, high volume installers and service technicians contact the permit clerks occasionally to ask

whether a permit is needed. (Tr. 56-57.) The permit clerks are familiar with permit requirements and can provide advice whether a permit is needed for a particular job. (Tr. 57.)

The permit clerks are hourly employees eligible for overtime. Their hourly wage rates range from \$13.02 to \$17.92. (Tr. 140.)

There is one high volume licensing compliance processor at the Miramar Facility, and that person performs essentially the same duties as the permit clerks. (Tr. 60.) The Miramar Facility pulls approximately 1,600 permits per month and services 73 different municipalities, and the licensing compliance processor tracks the open permits in each municipality. (Tr. 60.) The licensing compliance processor's phone number is also the main line for issues involving residential permits. (Tr. 61.)

There are two close-out clerks at the Miramar Facility, and they process all the completed paperwork. (Tr. 120.) They are on the back-end of the high volume operation. (Tr. 120.) They make sure the high volume installer returns his completed install packet and that the installed parts are costed correctly in Oracle. (Tr. 275-76, 279.) The close-out clerks interact with the technicians on a regular basis when they find issues with the packet brought back from the jobsite. (Tr. 121.) One close-out clerk estimated that paperwork errors occur on about 30% of the residential install jobs. (Tr. 282.)

The close-out clerks are hourly employees eligible for overtime. Their hourly wage rates range from \$15.48 to \$25.03. (Tr. 140.)

F. Job Descriptions for Disputed Employees in the Commercial Division

1. Install Coordinator and Service Coordinator

There are two commercial install coordinators at the Miramar Facility, and their job is to do all that is necessary to get the commercial installers out into the field. They are responsible

for assigning the backlog of install jobs to the commercial installers and for distributing the necessary paperwork to the commercial installers before they go into the field. (ADT Ex. 1; Tr. 52.) Install coordinators make their assignments based on how well the difficulty of a job corresponds with the skill level of a particular installer. (Tr. 53.)

There is one commercial service coordinator at the Miramar Facility, and that person is responsible for assigning the backlog of service jobs to the service technicians and for tracking what parts are installed on-site. (ADT Ex. 1; Tr. 227-28, 247.) The service coordinator interacts with the service technicians daily. (Tr. 55.) Service technicians call the service coordinator to work out scheduling issues, such as needing to work closer to home or leave work early. At times, the service coordinator calls the technicians to find out exactly what parts they installed at the customer's facility, and the service coordinator then uses this information to track costs and complete the billing process. (Tr. 247-48.) This takes up approximately 40% of the service coordinator's time on a daily basis. (Tr. 251.)

2. Drafter, Estimator, and Field Support Specialist

There are two drafters at the Miramar Facility, and they create technical diagrams of where devices will be installed at the customer's facility. (Tr. 35.) The commercial installers use the diagrams on-site to determine where all the devices should be installed. (Tr. 36.) Drafters work closely with the commercial installers, who routinely have questions regarding the placement of devices at a particular facility. (Tr. 37.) Commercial service technicians also use the diagrams when they repair the systems installed by the commercial installers. (Tr. 36.) Approximately 10% of the drafter's shift is spent working with field technicians. (Tr. 426.)

There is one estimator at the Miramar Facility, and that person serves as the go-between for the sales team and the install team. (Tr. 38.) The estimator looks at the site, the customer's

expectations, and the equipment involved and puts together a cost-efficient install plan. (Tr. 38.) The estimator works with the commercial installers and service technicians to answer questions regarding the details of a particular contract. (Tr. 38-39.)

There are two field support specialists at the Miramar Facility, and they ensure that ADT's national accounts are handled appropriately and consistently. (Tr. 42.) ADT's large clients usually expect the same or similar systems in all of their locations. (Tr. 42.) The field support specialists are aware of these expectations and communicate the same to the commercial installers. (Tr. 42.) At times, the field support specialist will go with the commercial installers and service technicians to a jobsite. (Tr. 42.)

3. Licensing Compliance Processor

There are two commercial licensing compliance processors at the Miramar Facility, and they review the sales contracts to determine if a permit is needed for an install job. (Tr. 40.) If one is needed, the licensing compliance processors apply for the permit with the local municipality. (Tr. 40.) When permits come back from the municipality, the licensing compliance processors distribute them to the appropriate install coordinator, who, in turn, includes the permit in the job packet that the commercial install technicians take to the jobsite. (Tr. 40.) Licensing compliance processors have regular contact with the field technicians. (Tr. 41.) Commercial technicians call and ask the licensing compliance processors whether a permit is required to do particular work. (Tr. 41.) Additionally, when the commercial installers complete their install jobs, the licensing compliance processors schedule inspections for the work.

V. ARGUMENT

A. A Substantial Question of Law or Policy Exists Because of the Absence of Officially Reported Board Precedent

ADT is unaware of any Board precedent that directly addresses whether a bargaining unit can be considered appropriate even though it includes employees that will soon work for different companies following a corporate split. In its Post-Hearing Brief, the Union cited no cases on this issue, and the only case cited by the Acting Regional Director in his DDE – *Canterbury of Puerto Rico, Inc.*, 225 N.L.R.B. 309 (1976) – provides no guidance.

In *Canterbury*, a one-page decision, the Board concluded that the employer's stated intention to cease operations was too speculative to bar an election. *Id.* at 309. Here, ADT does not seek to bar an election. It merely requests that there be two separate bargaining units. Also, this is not a case where the Board is being asked to rely on the employer's "stated intention." Instead, the Board can rely on the evidence presented at the hearing detailing the actions taken by Tyco's Board of Directors, its executives, and the managers at the Miramar Facility that show the corporate split is imminent.

Because of the absence of precedent regarding whether a bargaining unit is appropriate even though it includes employees that will soon work for different companies, the Employer respectfully requests that the Board grant this Request.

B. Because the Commercial Division and High Volume Division Will Soon Operate in Different Companies and Currently Operate Independent of Each Other, a Bargaining Unit Consisting of Employees in Both Divisions is Inappropriate

1. The pending corporate split makes a combined unit inappropriate

The Union and the Acting Regional Director both make much of the fact that Tyco's shareholders have not yet voted on the corporate split. The Union argued, and the Acting Regional Director agreed, that Tyco's plans are merely "speculative" until a shareholder vote

occurs. Their reasoning in this regard is clearly erroneous. As detailed in Part IV.B of this Request, Tyco has taken a number of actions to effectuate the corporate split. For instance, Tyco has secured the approval of its board of directors, submitted the appropriate documents to regulatory agencies in three countries, and identified the CEOs of the new companies.

Most importantly, the record is completely devoid of any evidence whatsoever demonstrating that shareholder approval, other than its mere absence, is in any way "speculative" either in general or with the proposed ADT split in particular. As a result, choosing such a singular fact (the lack of shareholder approval) in the face of such overwhelming evidence of a corporate split is to choose a highly inappropriate and thus clearly erroneous standard for such situations.

Indeed, the logic of the "bright-line" rule used by the Acting Regional Director is clearly flawed. Consider a hypothetical whether a Regional Director evaluated for an appropriate unit the day before a shareholder vote, and the company had already taken every single other action it could possibly take with respect to spinning off one of its divisions as a separate company. The shareholder approval is thus the only act remaining. Also assume the shareholder approval would be immediately effective. Under those facts, the Acting Regional Director would still find the corporate split to be speculative, and thus a combined unit such as the one in this case "appropriate" even though the next working day the commercial and high volume technicians would be in separate companies. Such a bright-line standard with such a result clearly contradicts the Act and must be error.

The Acting Regional Director also improperly relied on the fact that high volume area operations manager Mark Ricciardi could not provide the exact date one of the divisions would be leaving the Miramar Facility. (DDE 33.) Mr. Ricciardi's testimony is not evidence of the

uncertainty of Tyco's plans. On the contrary, Mr. Ricciardi's testimony shows that Tyco's plans have been communicated to the local managers. And while Mr. Ricciardi did not provide an exact date, he testified that the timeline for the move was within one year and could happen as early as March. (Tr. 123.) In any event, from September 19, 2011, to the present, Tyco has consistently stated that the corporate split will occur at the end of September 2012. It is difficult to see how Tyco's plans could be any more definite.

2. The commercial technicians and residential technicians do not share a community of interest with one another

The Acting Regional Director clearly erred in approving a combined unit because, even without consideration of the corporate split on the horizon, the commercial technicians and residential technicians do not share a community of interest. In *Kalamazoo Paper Box Corp.*, 136 N.L.R.B. 134, 137 (1962), the Board enumerated factors to be assessed in determining whether a community of interest sets a group of employees apart from other employees:

- 1. a difference in method of wages or compensation;
- 2. different hours of work;
- 3. different employee benefits;
- 4. separate supervision;
- 5. the degree of dissimilar qualifications, training, and skills;
- 6. differences in job functions and amount of working time spent away from the employment or plant sites;
- 7. the infrequency or lack of contact with other employees;
- 8. lack of integration with the work functions of other employees or interchange with them; and
- 9. history of bargaining.

An analysis based on the factors above reveals that the commercial technicians do not share a community of interest with the high volume technicians.

First, there is a difference in the method of compensation for the commercial technicians and the high volume technicians. Some of the high volume technicians are paid on commission, while all of the commercial technicians are paid hourly.

Second, the commercial technicians and high volume technicians are separately supervised and share no common managers. The commercial technicians report to either the commercial service managers or the commercial install managers (Tr. 25-27), while the high volume technicians report to either the high volume service managers, the high volume install managers, or the small business install manager. (Tr. 20-21, 448).

Third, as between the commercial and high volume divisions, there is a difference in job functions and amount of time spent working away from the Miramar Facility. The high volume technicians rarely, if ever, install card access controls, whereas the commercial installers routinely do so. (Tr. 399.) Also, high volume installers install small CCTV systems, whereas commercial installers install systems that are highly integrated with the customers' buildings and very complex. (Tr. 399.) Also, the high volume technicians work on many more jobs per week than do the commercial technicians. (Tr. 399.) In fact, a commercial installer testified that one of his jobs can last for an entire year. (Tr. 396.) He also testified that there is usually no need for him to go to the Miramar Facility (Tr. 396), whereas a high volume installer testified that he goes to the Miramar Facility most mornings. (Tr. 377.)

Fourth, there is no interchange between the petitioned-for employees in the commercial division and the petitioned-for employees in the high volume division. All field technicians work exclusively in their assigned division. (Tr. 126.) Also, at the Miramar Facility, employee transfers from one division to the other almost never occur. (Tr. 453-55.)

Fifth, the commercial technicians and the high volume technicians interact with different employees and to a different degree. The commercial and high volume divisions have different human resources managers (Tr. 130-31) and different support staff (Tr. 114-15). Commercial technicians would only have work-related contact with other commercial employees at the

Miramar Facility. Likewise, high volume technicians would only have work-related contact with other high volume employees.

Also, while the record is replete with examples of interaction between commercial technicians and commercial production clericals and between high volume technicians and high volume production clericals, *the record is completely devoid of any evidence of interaction* between high volume technicians and commercial technicians. (Tr. 375-403.)

Finally, fundamental fairness to the employees themselves requires separate units for commercial and high volume. As shown above, the two divisions already function as separate companies, and these groups will actually be separate corporations shortly. The commercial division has significantly fewer employees than the high volume division. (ADT Ex. 1.) If commercial employees desire union representation and the high volume employees do not, the commercial employees' desires will be overshadowed by employees who do not share their community of interest and will soon be in a separate corporate entity. Conversely, if the desires of the commercial employees will again be overshadowed by employees who do not share their community of interest and will soon be in a separate corporate entity.

The results of this election will follow the commercial and high volume employees into the soon-to-be separate companies and could impact employees in other facilities that could be merged with the Miramar Facility employees at new facilities. Under all of these facts, the Board must split the petitioned-for unit into separate units of commercial and high volume employees so that the true desires of these separate groups with separate communities of interests can be honored.

- C. Because The Duties of the Disputed Employees are Functionally Integrated With the Install and Service Function and the Disputed Employees Have Routine Daily Contact with the Field Technicians, the Disputed Employees are Production (Plant) Clericals
- Employees who perform clerical duties in association with the production process are considered production clericals and should be included in the same unit as the employees they support. Goodman Mfg. Co., 58 N.L.R.B. 531, 533 (1944); Brown & Root, Inc., 314 N.L.R.B. 19, 23 (1994). The Acting Regional Director dismissed the employer's argument that the disputed employees are production clericals because there is no plant in this case. (DDE 38.) He essentially determined that the production clerical line of cases did not apply here because the disputed employees do not work in the same location as the field technicians. Such a determination is clearly erroneous because working in the same location is not the dispositive factor in plant clerical cases, rather the "indispensable and conclusive element is that the asserted [production] clericals perform functions closely allied to the production process or to the daily operations of the production facilities at which they work." Gordonsville Industries, 252

In the instant case, the disputed employees are production clericals since they are integral to ADT's install and service operations. These clericals' job functions directly relate to the job functions of the petitioned-for employees and are equally important components of the Miramar Facility workflow. All of the disputed employees have computer access, and these employees input their work into computer programs and modules, such as Oracle, Mastermind, Gantt, and Telemar, that operate in a centralized fashion to ensure the operations at the Miramar Facility are efficient. (Tr. 433-45.) Depending on their job classification, employees have access to one or more of these programs and rely on the data inputted by employees in other job classifications, to do their work. (Tr. 433-45.)

N.L.R.B. 563, 591 (1980), quoting Fisher Controls Co., 192 N.L.R.B. 514 (1971).

For example, the field technicians have access to Mastermind, which contains customer information. (Tr. 436-37.) By the time the field technicians access Mastermind on-site, the program contains information from the estimators, permit clerks, runners, and coordinators. (Tr. 434.) By way of another example, the warehouse employees maintain the inventory at the Miramar Facility through the Oracle program, which is linked to Mastermind. (Tr. 439-40, 444.) Field technicians input data via their handheld devices when they install parts on-site. (Tr. 444.) The coordinators and close-out clerks review the data in Oracle on the back end to complete their billing and permit closing duties. (Tr. 439, 434-44.)

2. Generally, the Acting Regional Director placed too much emphasis on the daily contact factor

As mentioned above, the Acting Regional Director observes that there is little daily contact between the field technicians and the disputed employees and uses these facts to determine that the disputed employees do not share an overwhelming community of interest with the petitioned-for employees. Contrary to the Acting Regional Director's observation, the Employer presented testimony showing that the disputed employees have consistent daily contact with the field technicians. The warehouse employees interact with the field technicians every day at the warehouse counter. (Tr. 144-215.) The install and service coordinators interact with the technicians regularly in order to perform their dispatching duties, address scheduling concerns, and distribute job packets. (Tr. 51-55, 251.) One commercial service coordinator estimated that she spent 40% of her day handling calls from technicians. (Tr. 251.) The drafters spent approximately 10% of their day working with technicians. (Tr. 426.) The estimator fields questions from technicians regarding the details of particular contracts. (Tr. 38-39.) The field support specialists walk jobs with the commercial technicians. (Tr. 42.) The permit clerks and

licensing compliance processors regularly field questions from technicians regarding permits. (Tr. 41, 303-04.)

Regardless, even if the Employer did not present this compelling evidence of daily interaction, a lack of regular contact between the disputed employees and field technicians would not be a proper basis to exclude the disputed employees in this case. As the Acting Regional Director correctly observed, there is no plant at the Miramar Facility. (DDE 38.) The petitioned-for employees are not on a production line in close contact with one another throughout the day. The field technicians' worksites are the homes and businesses of ADT's customers. Therefore, the field technicians do not have routine daily contact with each other 13 or with the disputed employees. Some technicians go directly from their homes to the jobsites. For instance, the commercial installer who testified at the hearing stated that most days he would go directly to the customer's location. (Tr. 392.) Other technicians briefly come through the Miramar Facility in the morning. For example, a residential installer testified, "[w]e get our copies for the day, and we go to the warehouse and get the equipment, and we're out the door." (Tr. 378.) Basically, by virtue of the nature of field technicians' work, they do not have daily contact with other employees. Therefore, this factor should not weigh in favor of excluding the disputed employees.

3. The Warehouse Employees

The warehouse employees should be included in any unit found appropriate because those employees have daily contact with the petitioned-for employees and their duties are functionally integrated with the operations at the Miramar Facility. In its Post Hearing Brief, the Employer cited three Board cases unequivocally holding that warehouse employees should be

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¹³ Of course, in the event that multiple field technicians are assigned to the same job, they will have daily contact with one another; however, those technicians would not have daily contact with technicians working on other jobs.

included in the bargaining unit consisting of the employees they support. *See Brown & Root, Inc.*, 314 N.L.R.B. 4 (1994) (material take-offs and toolroom/warehouse clerks should be included in a production and maintenance unit); *Mid-State Distributing Co., Inc.*, 276 N.L.R.B. 1511 (1985) (inventory clerk should be included in a unit of warehouse employees); *Avon Products, Inc.*, 250 N.L.R.B. 1479 (1980) (inventory clerks must be included in a unit of production and maintenance employees). The Union cited no case holding that the warehouse employees should be excluded. Nevertheless, the Acting Regional Director excluded the warehouse employees from the unit. This is a departure from officially reported Board precedent and is clearly error.

The Acting Regional Director completely disregarded *Mid-State* and *Avon Products* providing no explanation as to why those cases did not control the analysis here. This is especially surprising considering how similar the facts in those cases are to the facts in this case.

In *Mid-State*, the inventory control clerk walked the aisles of the warehouse and noted what inventory was present. 276 N.L.R.B. at 1560. The clerk then used her notes to calculate the facility's on-hand inventory at her desk. *Id.* at 1560. Even though the inventory clerk spent just 45 minutes per day in the warehouse and used a computer, she was considered a production clerical because her duties were closely tied to the inventory, shipping, and receiving functions of the facility. *Id.* at 1561.

In *Avon Products, Inc.*, inventory clerks collected data across the facility and submitted it to the data processing department for entry into the facility's computer network. 250 N.L.R.B. 1479 (1980). The Board recognized that the inventory clerks "came into repeated daily contact with other unit employees" and, in finding that they were an essential part of the bargaining unit, held:

the jobs performed by these employees, which involve costs, inventories, and profits, relate directly to the order flow process inasmuch as the data compiled provides a foundation for the manner in which the entire order filling process operates.

Id. at 1487.

As in *Mid-State* and *Avon Products*, the warehouse employees at the Miramar Facility work in a warehouse keeping track of inventory and interacting with petitioned-for employees. As the Acting Regional Director recognized, the warehouse employees have regular contact with the field technicians. (DDE 36.) All day long the warehouse employees and field technicians interact with one another at the warehouse window. (Tr.157-160.) The supply chain coordinator testified that she talked to approximately 45 high volume installers each day. (Tr. 160.) She also said that her phone rings off the hook because field technicians constantly call the warehouse to inquire about the status of equipment. (Tr. 160.)

Also as in *Mid-State* and *Avon Products*, the functions of the warehouse employees at the Miramar Facility are intimately connected to the workflow of the employees they support. The warehouse employees maintain the inventory module within the Oracle computer program, which tracks what equipment is in the warehouse, what equipment was picked up by the installers, what equipment was installed on-site, and what equipment is stored on the service technicians' trucks. (Tr. 155-56.) This oversight of inventory and contact with the field technicians illustrates that the warehouse employees have a community of interest with the petitioned-for employees. Accordingly, the warehouse employees are production clericals and should be included in the high volume unit.

The Acting Regional Director incorrectly asserted that *Brown & Root* did not support the Employer's arguments. He made this assertion without discussing – or even mentioning – the warehouse employees at the Miramar Facility. This is clearly erroneous because like the

toolroom/warehouse clerks in *Brown & Root* who distributed materials to petitioned-for employees, the warehouse employees distribute parts and equipment to the field technicians.

Also like the disputed employees in *Brown & Root* who interacted with petitioned-for employees continuously, the warehouse employees communicate with the field technicians at the warehouse counter and on the phone throughout the day.

These three Board cases establish that warehouse employees should be included in the unit of employees they support, where (1) the work of the warehouse employees is functionally integrated with that of the petitioned-for employees and (2) the warehouse employees have regular contact with the petitioned-for employees. Both those facts are present here and, therefore, the warehouse employees should be included in any unit the Board finds appropriate.¹⁴

4. The Install and Service Coordinators

The install and service coordinators in both divisions should be included in any unit containing the field technicians they support because the coordinators have daily contact with the field technicians and their duties are functionally integrated with the operations at the Miramar Facility.

The Board has found that a coordinator is a production clerical and should be included in a unit of skilled maintenance workers. *Desert Palace Inc.*, 337 N.L.R.B. 1096, 1099 (2002). In *Desert Palace*, the Union challenged the inclusion of an engineering coordinator in a unit consisting of skilled maintenance technicians. *Id.* at 1096. The engineering coordinator had a multitude of duties, which included: dispatching technicians in response to service calls, determining which engineer was qualified to handle the service call, maintaining scheduling, and imputing time-off requests. *Id.* at 1098-99. The Board noted that such dispatching duties have

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¹⁴ If the Board agrees with the Employer's argument that the petitioned-for unit should be split into a commercial unit and high volume unit, the warehouse employees would belong in the high volume unit. Although they work with technicians in both divisions, their manager is in the high volume division. (Tr. 447.)

been found to be production clerical in nature. *Id.* at 1098 (citing *Colonial Lincoln Mercury Sales*, 197 N.L.R.B. 54, 64 (1972), enfd. 485 F.2d 455 (5th Cir. 1973).

The Acting Regional Director attempts to distinguish the engineering coordinator in *Desert Palace* from the install and service coordinators here because the engineering coordinator performed technical work in addition to his clerical duties. While this may be true, *Desert Palace* clearly supports ADT's position because the Board's decision to include him as a plant clerical was based on his dispatching duties – not on any technical duties he may have performed. *Id.* at 1098 ("Such dispatching duties have been found to be plant clerical in nature."); *Id.* at 1099 ("On this record, then, while the scope of Maier's [technical] duties may not be certain, it is clear, we think, that Maier cannot be excluded from the unit as an office clerical. To the extent that Maier performs clerical duties, we agree with the Employer that they are plant clerical in nature."). In sum, it is clear error to exclude employees who perform what are essentially dispatching duties, and such error exists in this case with respect to the coordinators.

5. The Drafters, Estimator, and Field Support Specialists

The drafters, estimator, and field support specialists should be included in any unit found appropriate because those employees have daily contact with the petitioned-for employees and their duties are functionally integrated with the operations at the Miramar Facility. In summarily concluding that these employees do not share a community of interest with the petitioned-for employees, the Acting Regional Director recites the facts of *PECO Energy* and then dismisses the Employer's position in one sentence, proclaiming "[t]here has been no contention here that any of the Employer's employees are technical employees" (DDE 41.) This broad

statement shows that the Acting Regional Director simply disregarded the testimony presented at the hearing and the arguments presented in Employer's Post-Hearing Brief.

As explained in Employer's Post-Hearing Brief, the drafters create *technical* diagrams that are used in the field by technicians. (ADT Brief 33.) The estimator uses *technical* knowledge to transition the customer's desires into *technical* plans that the commercial installers can use to install the system. (ADT Brief 33.) Similarly, the field support specialists provide *technical* background to the commercial installers regarding why an installation should be done in a specific way. (Tr. 42-43.)

The Board has held that employees, who use technical knowledge to prepare design documents, should be included in a unit of technicians. *See PECO Energy Co.*, 332 N.L.R.B. 1074 (1997). The Board concluded that these employees should be included because their work was integrated with the facility's operations. *Id.* at 1087. This is consistent with other Board cases regarding drafters. *See McLean Hospital*, 234 N.L.R.B. 54 (1978) (draftsmen working in the administrative office included in operations unit); *Tarrant Mfg. Co.*, 196 N.L.R.B. 794 (1972) (draftsmen included in production and maintenance unit). The Acting Regional Director clearly erred in failing to apply this Board precedent and in stating "[t]here has been no contention here that any of the Employer's employees are technical employees "

D. Additional Job Classifications under Review

The duties of the licensing compliance processors, permit clerks, runners, and close-out clerks are necessary to the technicians' ability to perform their tasks and, as a result, they should be included in the bargaining unit.

The runners should be included in any unit found appropriate because their duties are functionally integrated with the operations at the Miramar Facility. The Acting Regional

Director concluded that the runners did not share a community of interest with the petitioned-for employees because the runners' duties differ from the technicians' duties. (DDE 38.) In so doing, the Acting Regional Director completely ignored the Board precedent cited by the Employer holding that drivers should be included in a unit of production and warehouse employees at a mattress production facility, *despite the fact that the duties of the drivers differed from the duties of the petitioned-for employees. Int'l Bedding Co.*, 356 N.L.R.B. 1 (2011).

The permit clerks and licensing compliance processors should be included in any unit found appropriate because those employees have daily contact with the petitioned-for employees and their duties are functionally integrated with the operations at the Miramar Facility. Thus, the Acting Regional Director erred in excluding them. The permit clerks and licensing compliance processors receive and process paperwork that is essential to the functioning of the Miramar Facility's operations. In fact, without these employees, the field technicians could not perform their jobs. (Tr. 41.) They also regularly take calls from field technicians regarding permit issues. There was testimony from one permit clerk that she handled 5-10 calls a day from field technicians. (Tr. 60.) Approximately 25% of her day was spent addressing the concerns raised in those phone calls. (Tr. 301.)

The close-out clerks should be included in any unit found appropriate because those employees have daily contact with the petitioned-for employees and their duties are functionally integrated with the operations at the Miramar Facility. In deciding to exclude the close-out clerks from the unit, the Acting Regional Director did not even address the Board precedent cited by the Employer holding that employees who collect and process paperwork on the back end of the workflow should be included in the unit as production clericals. *See Federal Express*

Ground Package Sys., Inc., 2001 N.L.R.B. Lexis 1088 (2001) (check-in clerks and data entry clerks should be included in a unit of package handlers).

In *Federal Express*, the disputed employees collected paperwork from FedEx's delivery drivers at the end of their shifts and also processed electronically-scanned information from the drivers' handheld devices. *Id.* at *19-*20. The Board observed that there was a "high degree of functional integration" between the work of the disputed employees and that of the package handlers. *Id.* at *35-*36.

The duties of the disputed employees in *Federal Express* are remarkably similar to the duties of the close-out clerks at the Miramar Facility. Like the employees in *Federal Express*, the close-out clerks process the paperwork coming from field employees. Specifically, the close-out clerks review data, inputted into the Oracle System by the field technicians on-site, to complete the billing process. (Tr. 274-76, 289-90.) During this process, paperwork errors occur approximately 30% of the time, and the close-out clerks work directly with the field technicians to correct these errors. (Tr. 282-84.) Therefore, the close-out clerks, like the check-in clerks in *Federal Express*, routinely interact with petitioned-for employees. As such, the close-out clerks, like the check-in clerks in *Federal Express*, are production clericals and should be included in the unit.

The work done by the runners, permit clerks, the licensing compliance processors, and the close-out clerks is functionally integrated into the high volume workflow. In fact, without these employees, the field technicians could not perform their jobs. (Tr. 56, 58, 60-61.) Because of this integration, the Acting Regional Director clearly erred in excluding these employees from the unit.

E. The Fact that the Disputed Employees Share Common Benefits and Salary Ranges with the Petitioned-For Employees Further Shows That They Should be Included in the Unit

The evidence showing the disputed employees share common benefits and salary ranges with the field technicians weighs strongly in favor of including the disputed employees in any bargaining unit that includes the field technicians. However, the Acting Regional Director gave little weight to the fact that ADT offers the exact same medical insurance plans, vacation plans, holiday schedules, dental insurance plans, flexible spending account options, life and accident insurance policies, supplemental life insurance plans, and long-term disability plans to the petitioned-for employees and disputed employees alike. (Tr. 133-35.)

Likewise, the Acting Regional Director discounted the fact that the wage ranges for the disputed employees fall within the same ranges as those of the petitioned-for employees. The field technicians earn anywhere from \$15.49 to \$26.33, and the employees in the disputed classifications earn anywhere from \$13.02 to \$25.03.

F. Even if the Petitioned-for Unit is Not Split, the Unit Should Include Production Clericals

As shown above, the production clericals have an overwhelming community of interest with the field technicians in their respective division and, thus, were improperly excluded from the unit by the Acting Regional Director. Therefore, regardless of whether the Board concludes that the unit should be split, the production clericals should still be included in any unit found appropriate.

VI. CONCLUSION

For the above reasons, the Acting Regional Director clearly erred in approving the petitioned-for unit because (1) the only appropriate unit in this case is actually two units – one consisting of commercial employees and one consisting of high volume employees; and (2) the

petitioned-for unit excluded production clericals who had an overwhelming community of interest with the field technicians.

Accordingly, the Board should reverse the Acting Regional Director's decision and direct that elections be conducted for a commercial bargaining unit and a high volume bargaining unit.

Employees in the following job classifications should be added to the commercial unit:

- 1. Drafter;
- 2. Estimator;
- 3. Field Support Specialist;
- 4. Commercial Licensing Compliance Processor;
- 5. Commercial Install Coordinator; and
- 6. Commercial Service Coordinator.

Employees in the following job classifications should be added to the high volume unit:

- 1. Permit Clerk;
- 2. High Volume Licensing Compliance Processor;
- 3. Runner;
- 4. High Volume Install Coordinator;
- 5. High Volume Service Coordinator;
- 6. Supply Chain Coordinator;
- 7. Material Handler;
- 8. Lead Material Handler; and
- 9. Close-out clerk.

Even if the Board decides that the unit should not be split, employees in the above job classifications should be included in any unit found to be appropriate.

Dated this the 2nd day of March 2012.

Respectfully submitted,

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION TWELVE

ADT SECURITY SERVICES, INC.,)	
Employer,)	
and)	Case No. 12-RC-071890
INTERNATIONAL BROTHERHOOD)	
OF ELECTRICAL WORKERS, LOCAL	į	
UNION 349, AFL-CIO,)	
Petitioner.	j j	
)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served via Electronic Mail the following Request for Review, on the following:

Alan Eichenbaum, Esq. 10059 N.W. 1st Court Plantation, FL 33324 alanlaw@bellsouth.net

This the 2nd day of March 2012.

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

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